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W.P.Nos.26772 and 26773 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.26772 and 26773 of 2017

And

W.M.P.No.28511 of 2017

The Management
S.627 Salem Milk consumer Co-op. Society Ltd.,
Represented by its President
P.Murugan
4th Cross, Maravaneri,
Salem – 636 007.

... Petitioner in both the W.Ps.

Vs.

- 1.The Presiding Officer
Labour Court
Salem.
- 2.M.Dorai
- 3.The Managing Director,
Salem District Co-operative
Milk Producers Union Limited,
Thalavaipatti,
Salem.

(R3 *Suo Motu* impleaded vide
order dated 07.12.2022 made in
W.P.Nos.26772 & 26773 of
2017 by MSRJ)

... Respondents in both the W.Ps.

Prayer in W.P.No.26772 of 2017:

Petition filed under Article 226 of the Constitution of India to



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issue a Writ of Certiorari calling for the entire records relating to the order dated 10.03.2016 in R.E.P.No.29 of 2015 in I.D.No.164 of 2001 on the file of the Labour Court, Salem, quash the same.

Prayer in W.P.No.26773 of 2017:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the entire records relating to the order dated 24.07.2017 in R.E.A.No.22 of 2016 in R.E.P.No.29 of 2015 in I.D.No.164 of 2001 on the file of the Labour Court, Salem, quash the same.

For Petitioner : Mr.D.Shivakumaran
For Respondents : R1 – Court
Mr.K.V.Shanmuganathan for R2
Mr.I.John Arockiadas for R3

COMMON ORDER

The petitioner has filed these writ petitions seeking issuance of Writ of Certiorari calling for the entire records relating to the orders, dated 10.03.2016 in R.E.P.No.29 of 2015 in I.D.No.164 of 2001 and dated 24.07.2017 in R.E.A.No.22 of 2016 in R.E.P.No.29 of 2015 in I.D.No.164 of 2001 respectively, on the file of the Labour Court, Salem and to quash the same.



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2.Since the issue involved in these writ petitions are interrelated, they are heard together and disposed of by way of a common order.

3.The case of the petitioner is that the second respondent was working as driver in the petitioner society and due to his misconduct, charges were framed and after due enquiry, he was removed from service on 30.12.2000. Thereafter, the second respondent raised industrial dispute in I.D.No.164 of 2001 before the first respondent and the first respondent passed award dated 30.04.2003, directing reinstatement of the second respondent with backwages. Thereafter, the second respondent filed computation petition in C.P.No.372 of 2005 before the first respondent under Section 33C(2) of the Industrial Disputes Act claiming backwages of Rs.2,69,400/- for the period from 01.11.2000 to 30.04.2005 and the first respondent vide order dated 27.12.2005 allowed the computation petition.

4.The further case of the petitioner is that thereafter, the second respondent filed execution petition in R.E.P.No.29 of 2015 under Order 21 Rule 11 of C.P.C., seeking to arrest the President of the petitioner society and to execute the order dated 27.12.2005 in C.P.No.372 of



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2005 and the first respondent vide dated 10.03.2016 allowed the said execution petition. The petitioner filed R.E.A.No.22 of 2016 in R.E.P.No.29 of 2015 under Section 47 read with Section 141 of C.P.C. seeking to dismiss R.E.P.No.29 of 2015, however, the first respondent vide order dated 24.07.2017 dismissed the said petition. Challenging the orders dated 10.03.2016 and 24.07.2017, these writ petitions have been filed.

5.The learned counsel appearing for the petitioner submitted that admittedly award was passed as against the petitioner. Subsequently, the second respondent filed execution petition and warrant was issued to arrest the President of the petitioner society. At the time of passing of the award, the present President was not the President of the society and he was elected subsequently. The learned counsel further submitted that during the pendency of these writ petitions, the petitioner society got amalgamated with the third respondent and the petitioner society became defunct. If at all any award has to be executed, it has to be executed only by the third respondent.

6.The learned counsel appearing for the third respondent



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reported no instructions with regard to the award dated 30.04.2003 passed in I.D.No.164 of 2001 and the order dated 27.12.2005 in C.P.No.372 of 2005, however, submitted that the amount has not yet been deposited.

7.Heard the arguments advanced on either side and perused the materials available on record.

8.The facts in the present case is not in dispute. Admittedly, the second respondent was working as driver in the petitioner society and due to his misconduct, charges were framed and after due enquiry, he was removed from service on 30.12.2000. Challenging the same, the second respondent raised industrial dispute in I.D.No.164 of 2001 before the first respondent and the first respondent passed award dated 30.04.2003, directing reinstatement of the second respondent with backwages.

9.Thereafter, the second respondent filed computation petition in C.P.No.372 of 2005 before the first respondent under Section 33C(2) of the Industrial Disputes Act claiming backwages of Rs.2,69,400/- for the period from 01.11.2000 to 30.04.2005 and the first respondent



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vide order dated 27.12.2005 allowed the computation petition.

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10. Thereafter, the second respondent filed execution petition in R.E.P.No.29 of 2015 under Order 21 Rule 11 of C.P.C., seeking to arrest the President of the petitioner society and to execute the order dated 27.12.2005 in C.P.No.372 of 2005 and the first respondent vide dated 10.03.2016 allowed the said execution petition. The petitioner filed R.E.A.No.22 of 2016 in R.E.P.No.29 of 2015 under Section 47 read with Section 141 of C.P.C. seeking to dismiss R.E.P.No.29 of 2015, however, the first respondent vide order dated 24.07.2017 dismissed the said petition.

11. The petitioner without challenging the award dated 30.04.2003 passed in I.D.No.164 of 2001 or the consequential order dated 27.12.2005 in C.P.No.372 of 2005 before appropriate forum has filed these writ petitions, which is not sustainable one. Hence, this Court is not inclined to interfere with the orders impugned in these writ petitions.

12. These writ petitions are dismissed. However, liberty is granted to either the petitioner or the third respondent to deposit the



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award amount, within a period of four weeks from the date of receipt of a copy of this order, if not already deposited. The first respondent is directed to proceed with the matter in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

21.08.2023

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1.The Presiding Officer
Labour Court
Salem.

2.The Managing Director,
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Thalavaipatti,
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M.DHANDAPANI,J.
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